

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CYRIL STEVEROY COURTNEY JAMES, :

Petitioner, :

v. :

ERIC HOLDER, et al., :

Respondents. :

Civil Action No. 14-7192 (JLL)

OPINION

LINARES, District Judge

Petitioner Cyril Steveroy Courtney James (APetitioner@) is currently being detained by the Department of Homeland Security, Immigration and Customs Enforcement (“DHS/ICE”) at the Essex County Correctional Facility in Newark, New Jersey, pending his removal from the United States. On or about November 10, 2014, Petitioner filed a Petition for writ of habeas corpus under 28 U.S.C. § 2241, in which he challenges his detention. (ECF No. 1.) For the reasons stated below, this Court will deny the Petition.¹

I. BACKGROUND

Petitioner is a native and citizen of Antigua and Barbuda. (Pet. ¶ 6). He entered the United States on July 14, 1984. (*Id.*) Petitioner was taken into ICE custody on May 9, 2014 and on May 27, 2014, Petitioner was ordered removed by an Immigration Judge. (*Id.* at ¶ 6.)

¹ In addition to Roy L. Hendricks, Warden of Essex County Correctional Facility, Petitioner has also named various federal officials as respondents. The only proper respondent to a habeas petition challenging current confinement is the warden of the facility where the petitioner is being held. Accordingly, Warden Roy L. Hendricks is the only properly named Respondent in this action, and the other named respondents will be dismissed from this action with prejudice. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Yi v. Maugans*, 24 F.3d 500 (3d Cir. 1994).

Petitioner waived his right to an appeal. (*Id.* at ¶ 14.) Petitioner alleges that he has been detained for more than five months since his order of removal became final and there is no significant likelihood of removal in the reasonably foreseeable future. (*Id.* at ¶¶ 24, 26). Petitioner is seeking a declaration that his continued detention is not authorized and to be released under an order of supervision, or for this Court to “give an executive order to (DHS) with specific time that they have to remove the Petitioner or release.” (*Id.* at 16.)

II. DISCUSSION

A. Legal Standard

Under 28 U.S.C. § 2241(c), habeas relief “shall not extend to a prisoner unless ... [h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). A federal court has subject matter jurisdiction under § 2241(c)(3) if two requirements are satisfied: (1) the petitioner is “in custody,” and (2) the custody is alleged to be “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490 (1989).

This Court has subject matter jurisdiction over this Petition under § 2241 because Petitioner was detained within its jurisdiction, by a custodian within its jurisdiction, at the time he filed his Petition, *see Spencer v. Lemna*, 523 U.S. 1, 7 (1998) and *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 494–95, 500 (1973), and because Petitioner asserts that his detention is not statutorily authorized by 8 U.S.C. § 1231. *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

B. Analysis

Federal law sets forth the authority of the Attorney General to detain aliens in removal proceedings, both before and after issuance of a final order of removal.

Title 8 U.S.C. § 1226 governs the pre-removal-order detention of an alien. Section 1226(a) authorizes the Attorney General to arrest, and to detain or release, an alien, pending a decision on whether the alien is to be removed from the United States, except as provided in subsection (c). Section 1226(a) provides, in relevant part:

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General-

(1) may continue to detain the arrested alien; and

(2) may release the alien on-

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; ...

8 U.S.C. § 1226(a).

Certain criminal aliens, however, are subject to mandatory detention pending the outcome of removal proceedings, pursuant to 8 U.S.C. § 1226(c)(1), which provides in relevant part:

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in Section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

8 U.S.C. § 1226(c)(1).

“Post-removal-order” detention is governed by 8 U.S.C. § 1231(a). Section 1231(a)(1) requires the Attorney General to attempt to effectuate removal within a 90-day “removal period.”

The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). “An order of removal made by the immigration judge at the conclusion of proceedings ... shall become final ... [u]pon waiver of appeal by the respondent.” 8 C.F.R. § 1241.1(b). During the removal period, “the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2). Section 1231(a)(6) permits continued detention if removal is not effected within 90 days.

The Supreme Court held in *Zadvydas* that § 1231(a)(6) does not authorize the Attorney General to detain aliens indefinitely beyond the removal period, but “limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States.” 533 U.S. at 689. To guide habeas courts, the Supreme Court recognized six months as a presumptively reasonable period of post-removal-period detention. *Id.* at 701. The Supreme Court held that, to state a claim under § 2241, the alien must provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701. Specifically, the Supreme Court determined:

After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the “reasonably foreseeable future” conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Id.

In this case, Petitioner alleges that his order of removal became final on May 27, 2014 when he waived his right to appeal the immigration judge’s decision.² (Pet. ¶¶ 6.) By this Court’s calculations, and by Petitioner’s own admission (Pet. ¶¶ 16, 24), Petitioner had only been detained under a final order of removal for five months when he filed this petition. As stated by the Supreme Court in *Zadvydas*, six months is the presumptively reasonable period of post-removal-period detention. *See Zadvydas*, 533 U.S. at 701. Therefore, the Court will deny the petition without prejudice as premature. This denial is without prejudice to the filing of a new § 2241 petition (in a new case) upon the expiration of the six month presumptive period if Petitioner can allege facts, at the time of filing, showing good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future.³ *Id.*

² Petitioner acknowledges that his order of removal has become final and therefore his arguments pertaining to detention under 8 U.S.C. § 1226 are irrelevant to the instant case.


³ Even if the six month presumptive period had expired at the time Petitioner filed his petition, the *Zadvydas* Court emphasized that “[t]his 6-month presumption [] does not mean that every alien not removed must be released after six months.” *Zadvydas*, 533 U.S. at 701. Rather, the Supreme Court explained that, to state a claim for habeas relief under § 2241, an alien must provide in the petition good reason to believe that his or her removal is not foreseeable.

In the petition, Petitioner simply argues that there is no significant likelihood that his removal will occur in the reasonably foreseeable future and no special circumstances exist to justify his continued detention. (Pet. ¶¶ 24-26.) However, these allegations are not sufficient to

III. CONCLUSION

For the reasons set forth above, the petition will be dismissed without prejudice. An appropriate order follows.

Dated: 12/4/14



Jose L. Linares, U.S.D.J.

support his conclusion that his removal is not reasonably foreseeable and, under these circumstances, *Zadvydas* does not require DHS to respond by showing that removal is foreseeable. *See Zadvydas*, 533 U.S. at 701 (“After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.”). *See also Barenboy v. Attorney Gen. of U.S.*, 160 F. App’x 258, 261 n. 2 (3d Cir. 2005) (“Once the six-month period has passed, the burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future....Only then does the burden shift to the Government, which must respond with evidence sufficient to rebut that showing”) (citation and internal quotation marks omitted); *Joseph v. United States*, 127 F. App’x 79, 81 (3d Cir. 2005) (“Under *Zadvydas*, a petitioner must provide ‘good reason’ to believe there is no likelihood of removal, 533 U.S. at 701, and [petitioner] has failed to make that showing here.”).